

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

PEOPLE OF THE STATE OF
CALIFORNIA,

vs.

ANDREW J. MOORE,

Plaintiff,

Defendant.

CASE NO. 07cv2384 BEN (WMC)

**ORDER DENYING
DEFENDANT'S MOTION TO
PROCEED *IN FORMA PAUPERIS***

Defendant Andrew J. Moore has filed a notice under 28 U.S.C. § 1443 seeking to remove to this Court a criminal proceeding against him in the Superior Court of California, County of San Diego. Dkt. No. 1 (Dec. 19, 2007). Instead of paying the \$350.00 filing fee, Moore moves to proceed *in forma pauperis*. Dkt. No. 2 (Dec. 31, 2007). For the reasons set forth below, the Court denies Moore's motion and dismisses this action without prejudice and with leave to re-open upon payment of the filing fee.

DISCUSSION

This Court has broad discretion to grant or deny Moore's motion. *O'Loughlin v. Doe*, 920 F.2d 614, 616 (9th Cir. 1990). Moore need not be completely destitute to proceed *in forma pauperis*. *Adkins v. E.I. DuPont de Nemours & Co.*, 335 U.S. 331, 339-40 (1948). He must, however, demonstrate his indigency with "some particularity, definiteness, and certainty." *United States v. McQuade*, 647 F.2d 938, 940 (9th Cir. 1981) (*per curiam*).

1 In a declaration in support of his motion, Moore states that he is \$23,200 in debt and has one
 2 dependent. Dkt. No. 2 at 2-3. He also states that he owns a 2006 Toyota automobile and receives
 3 monthly income from social security (\$820.00), disability (\$850.00), and retirement (\$1,100), totaling
 4 \$2,770.00. *Id.* at 2. In addition, he earns a net income of \$1,100.00 from his employment. *Id.* He
 5 fails, however, to identify the pay period for his employment income. *Id.* As a result, the Court can
 6 only determine that Moore's monthly income is in excess of \$2,770.00, but cannot ascertain his total
 7 monthly income.

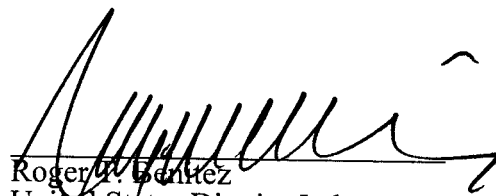
8 Moore's failure to verify his monthly income warrants denial of his motion. *McQuade*, 647
 9 F.2d at 940 (a district court may "deny the motion when the appellants were unable, or unwilling, to
 10 verify their poverty"). In any event, even if the Court were to disregard his employment income, his
 11 monthly income from other sources, coupled with his car ownership, sufficiently disqualifies him from
 12 proceeding *in forma pauperis*. See *Ross v. San Diego County*, No. 08cv0107, 2008 WL 440413, at
 13 *1 (S.D. Cal. Feb. 14, 2008) (Benitez, J.) (although the movant owed significant debt, her motion to
 14 proceed *in forma pauperis* was denied because she received approximately \$2,100.00 a month from
 15 disability insurance and owned a car and a house). Accordingly, the Court denies Moore's motion.

16 CONCLUSION

17 To remove a state court proceeding to this Court, Moore must pay a \$350.00 filing fee, unless
 18 this Court grants his motion to proceed *in forma pauperis* under 28 U.S.C. § 1915(a). 28 U.S.C. §§
 19 1914-15; *Rodriguez v. Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999) ("An action may proceed despite
 20 failure to pay the filing fees only if the party is granted [*in forma pauperis*] status."). Because his
 21 motion is denied, this removal action is dismissed without prejudice and may be re-opened if Moore
 22 pays the required filing fee within 60 days of the entry of this Order.

23 IT IS SO ORDERED.

24 Dated: May 8, 2008

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 28 Roger B. Benitez
 United States District Judge